

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3776 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMNARESH T MISHRA

GENERAL SECRETARY

Versus

ALPESH TEXTILES

Appearance:

MR RV DESAI for Petitioner

NOTICE SERVED BY DS for Respondent Nos. 1 to 5

M/S PATEL ADVOCATES for Respondent No. 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/08/1999

ORAL JUDGEMENT

This petition was admitted on 16.6.1999. Notice was issued. Respondent Nos. 1 to 5 have been served by direct service. None appears on their behalf. Respondent No. 6 is represented by Shri Kodekar, A.G.P.

Heard learned counsel for the petitioner and Shri Kodekar, learned A.G.P. for respondent No. 6.

The prayer in this petition is for issuing writ of mandamus directing the respondent Nos. 1 to 5 to implement forthwith the order passed by Payment of Wages authority on 10.2.1999 vide Annexure-A with further prayer for a writ of mandamus to respondent No. 6 to lodge criminal complaint against respondent Nos. 1 to 5 for committing breach of the provisions of the Payment of Wages Act, 1936, in not making compliance of the order dated 10.2.1999.

The brief facts are that upon an application of the petitioner who is General Secretary of the Gujarat Industrial Workers Association, the authority under the Payment of Wages Act passed an order on 10.2.1999 directing the opponents to pay the accrued legal dues amounting to Rs. 2,79,975.42 ps within thirty days of the order. There was further order to pay Rs. 500/towards cost and Rs. 5100/- towards court fee stamps to the petitioner. This order remained uncomplied with by the opposite parties before the Payment of Wages authority. No appeal was preferred against this order of the authority under the Payment of Wages Act. The contention has been that since the order of the Payment of Wages authority has not been complied with a mandamus may be issued directing the respondent Nos. 1 to 5 to make compliance of the aforesaid order dated 10.2.1999. It has been argued that there is no provision in the Payment of Wages Act, 1936 for recovery of amount directed to be paid by the authority under the Payment of Wages Act. My attention was also drawn to Sections 15 and 17 of the Act. Section 17 of the Act provides for appeal. In this case no appeal has been filed against the order of the authority under the Payment of Wages Act. In this view of the matter, the order dated 10.2.1999 has become final. Now a question arises whether enforcement of this order is to be made through a writ petition under Article 226 of the Constitution of India or is there is any other mode for recovery provided under the Act itself. If there is remedy provided under the Act for recovery of such amount then certainly jurisdiction under Article 226 of the Constitution of India cannot be invoked.

Section 15(5) of the Payment of Wages Act provides that any amount directed to be paid under this section may be recovered -

- (a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

It therefore follows from Section 15(5) of the Payment of Wages Act that an amount directed to be paid under Section 15 is to be recovered in any one of the modes prescribed under sub-section (5) of Section 15 of the Payment of Wages Act. Two modes of recovery are contemplated under sub-section (5). One is that if the authority under the Payment of Wages Act is invested with the powers of a Magistrate, it has to recover the amount on the motion of the person in favour of whom the order is passed as fine imposed to be recovered by such Magistrate. The second mode of recovery is that if the authority passing the order is not a Magistrate then it will forward the application to the concerned Magistrate who will recover the amount as fine imposed against the opposite party. In addition to this there has been State amendment by the State of Gujarat through Gujarat Act XXVI of 1961 which has adopted Maharashtra State Amendment for sub-section (5). Maharashtra Amendment has substituted the following for sub-section (5):-

"Any amount directed to be paid under this section may be recovered by the authority as an arrear of land revenue and the authority shall for that purpose be deemed to be a public officer within the meaning of Section 5 of the Revenue Recovery Act, 1890."

This provision is introduced vide Bombay Act LXX of 1954, Section 2 (15-11-1954) - Maharashtra Act XIII of 1961, Section 2 with effect from 4.3.1961.

It is therefore clear that there is a provision under the Payment of Wages Act as to how the amount ordered to be paid by the authority under the Payment of Wages Act is to be recovered and since this procedure has not been followed, it would not be proper for this court to allow this writ petition and issue writ of mandamus either for compliance of the order of the authority under the Payment of Wages Act or directing the respondent No. 6 to proceed for prosecution of respondent Nos. 1 to 5.

The writ petition is therefore not maintainable and is accordingly dismissed. However, the petitioner is directed to approach the authority under the Payment of Wages Act for recovery of the amount ordered to be paid

as contemplated under Section 15(5) of the Payment of Wages Act as amended by the State of Gujarat adopting the amendment made by the State of Maharashtra. No order as to costs.

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